

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,
W.A. DREW EDMONDSON, in his
capacity as ATTORNEY GENERAL
OF THE STATE OF OKLAHOMA,
et al.

Plaintiffs,

V.

TYSON FOODS, INC., et al.,

Defendants.

No. 05-CV-329-GKF-SAJ

TRANSCRIPT OF PROCEEDINGS

JUNE 15, 2007

MOTIONS HEARING

BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

APPEARANCES:

For the Plaintiffs: Mr. Louis W. Bullock
Mr. M. David Riggs
Mr. Richard T. Garren
Mr. Frederick C. Baker
Mr. W.A. Drew Edmondson
Ms. Kelly S. Burch
Mr. Robert A. Nance
Mr. J. Trevor Hammons
Ms. Ingrid Moll

For the Defendants: Mr. Robert W. George
Mr. Jay T. Jorgensen

Glen R. Dorrough
UNITED STATES COURT REPORTER

EXHIBIT

4

1 show it. These are hazardous substances, it applies. And I
2 sense the Court's reluctance that perhaps maybe at some point
3 CERCLA is going to fall and you don't want to leave them with
4 nothing. I don't mean to put words in your mouth.

5 THE COURT: The possibility.

6 MR. JORGENSEN: Yeah, but and again, you're saving
7 them from themselves. CERCLA should apply -- if they're saying
8 CERCLA applies today, then New Mexico applies today and that
9 ought to be the holding. If later in the case you decide that
10 CERCLA does not apply, I would love to come back to this podium
11 and talk about then whether New Mexico falls by the wayside and
12 their others come up, too. But it's weird that they would say
13 to you we can say CERCLA applies without getting a New Mexico
14 ruling that goes right along with it.

15 THE COURT: Somehow I sense that you would be a good
16 chess player. You've got the moves plotted out numerous moves
17 in advance. In any event, I, with due respect, I believe that
18 the law, as suggested on the procedure by the plaintiff, is
19 consistent with common sense here. I think that a
20 determination of whether or not other claims are preempted by
21 CERCLA is premature in light of the fact. And I'll parrot the
22 language here from the Southern District of New York case, in
23 light of the fact that defendants have not admitted that CERCLA
24 applies or that the million acre plot of land is a facility as
25 defined by CERCLA, the motion to dismiss is denied with leave

1 to renew.

2 MR. JORGENSEN: Thank you, Your Honor.

3 THE COURT: All right. Let's be in recess until 1:30
4 p.m. You-all can go over and see the muddy car. We're in
5 recess until 1:30.

6 (Recess.)

7 THE COURT: Be seated please.

8 THE CLERK: We're back on the record in Attorney
9 General State of Oklahoma, et al. vs. Tyson Foods, Inc., et
10 al., Case Number 05-CV-329-GKF.

11 THE COURT: First, a couple of housekeeping matters.
12 The number, for the record, of that last motion that was denied
13 is No. 1004. No. 1138 was also joined with that motion. And
14 in addition, my able and alert law clerks have pointed out to
15 me that No. 90, which was also filed by Peterson Farms, which
16 was basically the motion to stay to allow the matter to be
17 presented to the Compact Commission should also be denied in
18 conjunction with No. 75.

19 MR. MCDANIEL: Actually, Your Honor, that one is not
20 the Compact Commission. That is referred to the regulatory
21 agencies and that matter has not been heard.

22 THE COURT: Okay. Well, that's good. All right, so
23 then that will remain then. All right.

24 MR. MCDANIEL: Saved you from another 30 or 45
25 minutes.